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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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In the Matter of

Amendment of Parts 2 and 15 of  
the Commission's Rules to Permit  
Use of Radio Frequencies Above  
40 GHz for New Radio  
Applications

ET Docket No. 94-124  
RM-8308

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COMMENTS OF AVANT-GARDE

Avant-Garde Telecommunications, Inc. ("Avant-Garde"), by its attorneys, hereby comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup> In the NPRM, the Commission proposes to make spectrum above 40 GHz available for commercial use on both a licensed and unlicensed basis. In light of advances in millimeter wave technology, the Commission preliminarily determined that productive use could be made of this largely unused spectrum.

Avant-Garde has a strong interest in this proceeding. Avant-Garde had applied for licenses in the 28 GHz band, and was represented on the Negotiated Rulemaking Committee addressing the sharing of that band among satellite and terrestrial users. In this proceeding, the Commission proposes to utilize the 40.5-42.5 GHz band in much the same manner as had been proposed for LMDS service in the 28 GHz band.<sup>2/</sup>

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1/ Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, ET Docket No. 94-124, FCC 94-273, released November 8, 1994 (hereafter "NPRM").

2/ NPRM at ¶ 23.

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In addition to its interest in LMDS, Avant-Garde is presently a shorthaul microwave carrier that provides "last mile" services to interexchange carriers and will provide such services for PCS interconnection. Avant-Garde has received some 30 licenses in the most populous areas of the United States for services using the 38 GHz band (38.6-40.0 GHz).<sup>3/</sup> The 38 GHz band exhibits propagation characteristics similar to other bands above 40 GHz that the Commission is proposing to make available in the NPRM.

Avant-Garde has begun providing service using this 38 GHz band spectrum. Thus, Avant-Garde can confirm that commercial use of millimeter wave transmission is practical.<sup>4/</sup> In addition, Avant-Garde echoes the Commission's belief that the productive use of this spectrum can further the public interest by creating opportunities for economic growth and new jobs, as well as enhancing the United States' competitiveness in the world economy.

Avant-Garde's primary focus in this proceeding is on the spectrum the Commission proposes to make available for commercial uses, including the 40.5-42.5 GHz band. In order that the public interest benefits be maximized, the Commission must be sure that the spectrum that is made available is not artificially constrained in the manner in which it is licensed or used. The Commission's proposal in this proceeding basically to "import"

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<sup>3/</sup> Avant Garde was issued licenses by the Commission in September 1993, with a Public Notice of those grants having been released on September 29, 1993.

<sup>4/</sup> NPRM at ¶ 9.

its original proposals for the LMDS service in the 28 GHz band may need reexamination, depending on the anticipated uses for the spectrum and changed circumstances since the release of the LMDS rulemaking some two years ago.<sup>5/</sup>

The auction methodology, license territory size, amount of spectrum to be awarded to each licensee and the need, if any, for diversity, are all potentially affected by the intended use of the spectrum. Avant-Garde will thus review the initial comments filed in this proceeding to determine whether the licensing scheme originally proposed for LMDS remains appropriate here, or whether some other licensing methodology would better meet the needs of commercial services providers.

Respectfully submitted,

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5/ Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, CC Docket No. 92-297, 8 FCC Rcd 557 (January 8, 1993).